DR

C.F. 72.

1929

Department of L&Rsetts

OFFICE Bd. of Rev

STATION Madras

Mis. No. 1283

K. 2527

Dated 27-4-29

To whom sent		Date	Initial
	Given for copying		
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	Signed		
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Pages in the file	To be destroyed on*	11	

(SUBJECT.)

Escheat – (Kanara S.) – Mangalore T.K. Pilathabettu Vge – Hunaya Shadanga's property – Mortgage by Gouramma – Recovery of mortgage amount – Suit notice Order passed.

* Not to be filled in in the case of permanent records.

Back Paper.

C.F. 71.

Dia.	No.	Department. Series.	Date.	Dia.	No.	Department. Series.
Mis	2492	Mis 1108	10.9.20			
	30.10.26.	Mis 2581	21.12.22.			
Mis	1214					
	7.9.17.					
Mis	2308					
	11.10.26.					
Mis	741					
	11.3.29					
RC	660					
	1.2.27					

Further Papers.

Dia.	No.	Department. Series.	Date.	Dia.	No.	Department. Series.	Date.
M	1765						
7.6M							

K2527

Ref.on D.O.1565-21. South Kanara Collector's Office,

Mangalore, 16th March 1929.

From

G. W. Wells, Esquire, M.A., I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue & Settlement,

M a d r a s.

Sir,

Escheat - Mangalore Taluk - Pilathabettu village - Annaya Shadanga's property - mortgage by Gouramma - Recovery of mortgage amount with interest - suit notice.

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Mp 7-8 C.F

I enclose a copy of suit notice sent by Mr. B. Vaikunta Baliga, Vakil on behalf of his client Kechappajila.

2. The notice giver threatens to sue Government unless the amount of principal Rs.1500/- and interest thereon ------ Rs.2875-14-4 on account of the mortgage deed of 1st December'04 executed by Gouramma wife of Venkatramana Shadanga in favour of minor Nagaraja's grand uncle Shivappa Pergade by hypothecating the immoveable properties in S.No.72 of Pilathabettu village are arranged to be paid to him.

3. The property in question belonged to Annaya Shadanga and it was declared an escheat in G.O. No.2441, dated 9th August 1917 communicated with B.P.No.1214 Mis. dated 7th ----- September 1917. It was recovered by Government by filing a suit O.S.No.2/1921 before the Sub Judge, Mangalore against the said Gouramma and others who were in actual possession. In this suit the questions raised among others were whether there was no heir left to the estate of Annaya Shadanga and whether the partition deed between Annaya Shadanga's widow Mahalaxmi and Venkatramana Shadanga husband of the said Gouramma was valid. The Sub Judge decided both these points in favour of Government and gave a decree for possession.

3107 (I)

(I)

The Defendants appealed to the High Court; but the appeals ended in a compromise, the High Court passing a decree in terms of the compromise filed (G.O.No.53 R/Rev. dated 20-1-27 read in B.P.Routine No.660, dated 2.2.27). In this compromise, Gouramma surrendered her widow's interest in favour of the next reversionary heirs viz., her daughter Saraswati's sons and these reversioners became entitled to the moiety of the property, the other moiety going to Government.

4. The mortgage deed now sought to be enforced, did not come to our notice either at the escheat enquiry or in the suit inquiry. There was thus no occasion to dispute it till now. As however in the compromise effected in the High Court appeals the surrender by Gouramma of her rights in the estate in favour of her daughter Saraswati's minor children was recognised, it is a question whether the mortgage executed by Gouramma can be held binding on Government. Government no doubt claimed the property as belonging to Annaya saying that Annaya left no heirs and as such the mortgage in question cannot be held binding on Government. It must however be admitted that the mortgagees can proceed against the Government on the assumption that the partition between Mahalaxmi widow of Annaya and Venkatramana Shadanga is valid. There was an issue (No.2) in the suit whether this partition deed &c. are fraudulent and invalid for any of the reasons alleged by Government (Plaintiff) in the plaint and the Sub Judge decided this issue in favour of Government by finding that the partition deed is invalid as against the Crown. Please see para 30 of his judgment. Unfortunately on account of the compromise in the High Court appeals, there was no final adjudication of this issue and so this question will have to be gone through again in the suit which the mortgagees threaten to bring now.

5. The mortgage in question was executed by Gouramma who at the time of the mortgage could have no claim to the property except as a widow of Venkatramana Shadanga. Such being the case she could have no right to execute the mortgage except

for lawful necessities. Out of the mortgage amount of Rs.1500, the amount of Rs.200/- is said to have been borrowed by the widow for her daughter's marriage which took place 5 years' previously. There is no voucher for this old debt for accepting it as valid. The balance of Rs.1300/- is described as the prior mortgage debt. The prior mortgage deed No.206, dated 16-5-1895 which was executed by Gouramma in favour of Govindacharya when referred to gives the following details for the said amount.

1. Rs.400 on account of registered simple mortgage deed, dated 31-5-1888 executed by Venkatramana Shadanga (husband of Gouramma in favour of Srinivasa Elachilathaya, and interest thereon due up to the date of mortgage viz., Rs.32/-.

2. Rs.300 on account of a registered simple mortgage deed, dated 25-6-1890 executed by Venkatramana Shadanga in favour of Mukhyaprana Kunhannaya and interest thereon due up to the date of mortgage viz., Rs.24/-.

3. Rs.300 borrowed by Gouramma from the mortgagee Govindacharya on a pronote executed on 14-12-1894 for defraying the expenses of funeral obsequies of her husband.

4. Rs.50 borrowed already by Gouramma from the mortgagee Govindacharya for charges of registration &c. of this deed and

5. Rs.194 paid in cash before the Sub Registrar for defraying the expenses of the anniversary of her husband and for household expenses.

6. The 1st two items seem to be the debts binding against the estate of Venkatramana Shadanga, but the other items are of doubtful validity in the absence of proof that they are for lawful necessities. The question thus is whether the mortgage is or is not valid. The reversioners of Gouramma will naturally ---- question the validity of the mortgage as they will not be bound by Gouramma's alienations. In that case Government can join the reversioners and defend the suit with them. I do not therefore think that it is necessary to take any action on this suit notice except recording it.

7. I consulted the local Government Pleader in the matter and I enclose a copy of his letter Ref.No.84/28, dated 12-2-1929

giving his opinion. As he says that on account of the intricate points involved in the case, the Government Law Officers, may be consulted, I have submitted the case for the orders of the Board.

8. I must mention here that the Defendants in the escheat suit having failed to take advantage of their option to purchase the Plaintiff's (Government) half of the property at the valuation fixed by the Collector under condition 3 (v) of the High Court compromise decree, Government have filed an Execution petition for division of the property. It is still pending.

Your obedient servant,

H Samuels

For Collector.

ad
19-3-28.

15 MAR 1928

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Copy of letter Ref.No. 84/28 dated 12-2-1928
From - The Government Pleader and Public Prosecutor, Mangalore.
To - The Collector of South Kanara.

Reference:- Suits Sub-court O.S. No.2/21 -Pilathabettu Escheated property -Suit notice.

The question referred to me is not easily answered as it is a complicated matter.

The mortgage deed now sought to be enforced is the one executed by Gowramma widow of Venkatramana. The property admittedly belonged to Annaya. Annaya died in 1883 and his property devolved on his widow Mahalaxmi. The dispute between Mahalaxmi and Venkatramana was settled between them by means of a partition deed dated 16-8-1887 by which they divided Annaya's properties in a certain manner. Venkatramana died in 1895 leaving his widow Gowramma and a daughter Saraswati and under the Hindu Law Venkatramana's Properties devolved on his widow Gowramma and she seems to have executed a hypothication deed on 16-5-1895 for Rs 1300/-. In discharge of this mortgage debt she executed the mortgage in question for Rs 1500/- of which Rs 200/- is said to have been borrowed by her towards the expense of her daughter 5 years previously.

2. On the death of Mahalaxmi in 1911 Annaya's properties were declared an Escheat in 1917 and O.S.No. 2/21 was instituted for possession of Annaya Shadanga's property. Among others the following questions were raised viz (1) whether the partition deed referred to above was valid (2) whether there was no heirs left to the estate of Annaya. On both the questions the Sub-judge decided in favour of Government and gave a decree for possession. In the appeal before the High Court the disputes were compromised according to which Government got half of the properties sued for. In the course of the appeal Gowramma surrendered her widow's interest to the next reversionary heirs namely to her deceased daughter Saraswathi's sons and these reversioners became entitled to the half under the compromise.

3. The grounds for compromise are not seen nor is

it necessary to state on what grounds the compromise was based. But seeing that the surrender by Gowramma was recognised we can take Gowramma held the estate as the widow of Venkatramana. In fact at the time of the mortgage in question she could have no claim to the property except as a widow of Venkatramana. The right of a Hindu widow to alienate or to mortgage her husband's estate is a restricted one. Documents executed by widow must be for Lawful necessities. Gowramma's reversioners viz Saraswati's sons can question the validity of the mortgage in question and the mortgage would be invalid unless it is shown to have been executed for purposes valid and binding against the estate of Venkatramana. From the document it is seen that Rs 200/- were borrowed for daughter's marriage. If this debt is true it would be valid.. Except the recital there is no voucher for the debt of Rs 200/- contracted 5 years previously. As such it could not have been enforced on the date of mortgage. As regards Rs 1300 the prior mortgage may have to be looked into.

4. Government do not lay any claim to Venkatramana's property and cannot question the validity of the mortgage. Government claim the property as belonging to Annaya and as such the mortgage executed by Gowramma cannot be held binding against Government. The mortgagee of Gowramma can proceed against the Government on the assumption that the partition between Mahalaxmi and Venkatramana is valid. That is the very ground agitated in the escheat suit and there was no final adjudication. In the suit which the mortgagee may now bring the same question may have to be gone into. In case the partition deed is held good, even then Government will have the right to question the validity of the mortgage, because, Government would stand in the shoes of the reversioners with whom the escheat suit was compromised. If the sons of Saraswathi also question the validity of the mortgage which they can very well do as they will not be bound by Gowramma's alienations, then Government may very well go with them. There is no question I think, of the Government being held liable for half of the debt alone. Either the mortgage is or is not good. In the former case the mortgagee can enforce against the whole mortgage property.

5. As intricate points are involved in the case I would request that Government Law Officers may be consulted.

Record sent to me are herewith returned.

Compd. at 18-3-22

B. Vaikunta Baliga,
B.A., B.L.,
Vakil.

Loretto Villa,
Kodialbail P.O.,
Date 11. 9. 1928.

To

The District Collector of South Kanara,

Mangalore.

Suit notice. · Re Mortgage on the estate of Venkatramana Shadanga.

Sir,

I have been instructed to bring the following facts to your notice on behalf of my client Mr. Kechappajila, guardian appointed by the District Court of South Kanara for the properties of the minor Nagaraja Pergade of Punjalkatta, Mangalore Taluk.

That on 1-12-1904, Gowramma, wife of Venkatramana Shadanga executed a mortgage in favour of the aforesaid minor's grand-uncle Shivappa Pergade for the sum of Rupees 1500/- hypothecating the immoveable properties comprised in S.No. 72 of Pilathabettu village (pertaining to Muli Nos. 8,9,10,26). After the death of said Gowramma the properties have been taken possession of by the authorities on account of escheat proceedings and are in your possession.

The aforesaid Shivappa Pergade having died since the execution of the said mortgage in his favour, the rights thereof have now devolved upon the minor Nagaraja Pergade. Out of the amounts due thereunder no payments whatever have been made to my client. The principal amount with interest from 1-4-1916 onwards is due and remains unpaid.

The mortgage was executed also for the best necessities and is fully binding upon the estate said to have escheated to the Government and the properties hypothecated.

Therefore I am instructed on behalf of my client to request you to make arrangement for payment of the amounts due thereunder viz. Rupees 1500/- (Principal) and Rupees 2875-14-4 by way of interest etc. as per terms of the document as also Rupees 2-0-0 the costs of this demand within two months from this date. In case

of default, legal proceedings will be instituted in respect of which, this may be treated as notice under Section 80, if such notice be necessary.

I remain,

Yours faithfully,

(Sd.) B. Vaikunta Baliga,

Vakil.

(True Copy)

For Collector.

M.S.R./18.3.29.

18-3-29

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R. F. XXII-A-19.—26,004-31-1-29 (6).

FOR MEMBER.

Subject.—

Escheat -(Kanara S.) - Mangalore Tk - Pilathabettu Vge - Annaya Shadanga's property - Mortgage by Gowramma - Recovery of mortgage amount - Suit notice - Orders passed.

READ AGAIN B. P. No. _____, dated _____ 192 .

" " " _____ : " _____ 192 .

READ ALSO :—

Register No. K 25-27/29 From the Q _____, No. _____, dated _____ 192 .

" "_____, " "_____, "_____, "_____192 .

" "_____, " "_____, "_____, "_____192 .

RESOLUTION. Rs No 203, dated 27-4-1929.

The Coll^r is informed that the suit notice may be recorded and the threatened suit awaited.

by
27.4.29.

SU
26/4/29.

CRS
26.4.29

Issue orders
CRS
27.4.29.

To The Coll^r of S. Kanara.

M4
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A.S. (LR)
Thro A. see ⁱˢ
with a Book
(Mayne's Hindu Law)-

Bis 2308 Ms
11 to 26.

Escheat -(Kanara S.)- Mangalore T
-Pilathabettu Vge- Annaya
Shadanga's property - Mortgage by
Gouramma - Recovery of mortgage
amount - Suit notice.

K. 2527/29 ---- pp 1-8 C.P.

To A.S. (LR).

Please see the suit notice at pp 7- 8 C.P. and the Coll's letter at pp. 1-4 C.P.

The local G.P. is of the opinion that the matter is intricate and
bottom of p 6 C.P. recommends that the opinion of the Govt law officers may be obtained in the matter. The Coll'r
p 3 C.P. however, recommends that the suit notice may simply be recorded. The points relied on by the Coll'r in arriving at this
p 2 C.P decision are (1) that according to the Compromise decree the rights of Gouramma were surrendered to her daughter's children and that it is doubtful if whether the mortgage in question can bind Govt. (2)

P.T.

(2) that Gowramma had no right to execute the mortgage except for lawful necessities and that except in two items of expenditure quoted in the mortgage deed others are of doubtful validity. p 3 C.F.

and (3) that the reversioners of Gowramma will question the validity of the mortgage and Govt may join them in defending the suit.

Point (1)

As the Coll^r points out the mortgagees will have to prove the validity of the partition between Annaya Shadanga and Venkataramana Shadanga. Though this point has not been decided by the High Court the Sub Judge held that the partition was invalid as against the Crown. The opinion of the G.P. Madras, on this point is will be found at p11 of (G). This is a point in favour of Govt p 2 C.F. BB 2308 Mis 11.10.26 (G).

Point (2).

The Coll^r seems to consider that of the 5 items of expenditure noted at p 3 C.F. only the first 2 are valid and the rest invalid. According to Mayne's Hindu law items 3 and 5 are valid and item (4) also may be held to be put up.

to be valid as having arisen out of
Vide sec. 6 32 at pp 917-925.
due necessity. The only doubtful
Mayne's Hindu Law put up.
p 3 C.F. item is the sum of Rs 200/- which is
alleged to have been borrowed for the
daughter's marriage. & which is not
supported by any vouchers.

Point (3).

The local G.P. has pointed out that the mortgagees may proceed against ~~for~~ the whole mortgage property. In the above circumstances & in view of the intricate nature of the case it is subd that the opinion of the ~~Law Offr~~ Madras or G. Madras G.P. or the Advocate General may be obtained in the matter as
p 6 C.F suggested by the G.P. S. Kanara.

For orders.

SS 25.3.49. It seems unnecessary to consult the Law Officer of Court. at this stage. The Board may agree with the Collector and inform him that the notice of suit may be recorded.

A copy of the Collector's report with the Board's orders thereon may be submitted to Court.

Send two to H Section
28.3.49.

B
26-3-49

The facts of the case which led to the compromise referred to in para 3 of the Collr's letter are contained in the Madras Govt's letter at pp. 1-14 Cy of (Ex) to which reference is requested.

2. The appeal in the High Ct was compromised not because there was any doubt in regard to the invalidity of a partition deed between Mahalakshmi the widow of the last full owner of the property Annayya Shastriya and his only reversioner Venkatakrishnaiya Shastriya but because it was difficult to make the Madras High Ct hold that Saraswathi, Venkatakrishnaiya Shastriya's daughter, was not an heir of Annayya Shastriya. In the present case the mortgage deed was executed by Ramanna Venkatakrishnaiya Shastriya's widow. She would get a right to the property of her husband notwithstanding that he had predeceased Mahalakshmi he was not entitled to the property by reversion as already observed, the partition deed between him and Mahalakshmi is invalid In such circumstances the mortgage deed executed by Ramanna Venkatakrishnaiya Shastriya's widow in favour of the

P 3 of the printed Govt at (I)

P 1 (Ex)

[illegible] that point could not
[illegible] on the right. This is also
not dependence on the [illegible]
see when Count could succeed
in showing that the mortgagor
were [illegible] There is no
reason to suppose that they
[illegible] [illegible]
who [illegible] the parties
in the suit the mortgagee has no
[illegible]

3. In regard to the claim in
the counter-petition that Romanus
should relinquish an increase in
the crops ... as to be observed
[illegible] the words introduced in order
that he might not [illegible]
with any claim against Count. This is
binding only between the parties
it does not prevent Count from
moving as against [illegible] and
that he has not [illegible] any right [illegible]
[illegible] but should the Court
[illegible] [illegible]
[illegible] to the next mentioned
[illegible] from para 3 of the [illegible]
[illegible] it appears

6/

I aware of the grounds of the compromise. apparently on this will the trustees alone could plead matters may be considered. As the Bd is aware of the grounds as the action is clear with regard to the grounds of the compromise, now is necessary to consider the proposals in the threatened counter claim

In counter claim

Forwarded

28/4/1829

Solicitor

To A.S. (LR)

Draft subd

27.4.29

SG 26/4/29.

CB 26.4.29

Draft V (CB) 26.4.29